

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 9, 2020

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. URS-2020-00052

Ex Parte: In the matter
concerning regulations required by Chapter 822
of the 2020 Acts of Assembly

ORDER FOR NOTICE AND COMMENT

During its 2020 Session, the Virginia General Assembly enacted Chapter 822 (SB 385) of the 2020 Virginia Acts of Assembly ("Act"). The rulemaking provision of the Act became effective on July 1, 2020.¹ The Act, *inter alia*, amended the Code of Virginia ("Code") by adding § 56-257.2:1 (the "Statute"), directing the State Corporation Commission ("Commission") to promulgate regulations requiring that a licensed professional engineer exercise responsible charge over engineering projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 U.S.C § 60101 *et seq.*, as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety.² These regulations are in furtherance of the Act's related amendment to a Code provision³ that, *inter alia*, had generally exempted employees of Commission-regulated public service corporations from professional engineer licensing, when those employees

¹ The Act's Fourth Enactment Clause delays the effective date of the Act's First Enactment containing these Code amendments to January 1, 2021.

² Under the Statute, a professional engineer is defined as a person who is qualified to practice engineering by reason of special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

³ Section 54.1-401 of the Code.

provided engineering services in connection with public service corporations' facilities regulated by the Commission. The Act further required the Commission to convene a stakeholder group, including representatives of natural gas utilities in the Commonwealth, and to direct such stakeholder group to develop and propose to the Commission recommendations concerning such regulations no later than December 1, 2020.

On May 29, 2020 the Commission issued an Order Establishing Proceeding that, among other things, directed Staff to, utilizing input from the stakeholder group and upon its own inquiry, submit to the Commission, on or before December 1, 2020, a Staff Report presenting draft regulations, findings, and recommendations corresponding to the Act's Third Enactment Clause. On November 24, 2020 Staff filed its Report in which it summarized the work of the stakeholder group and provided proposed rules for the Commission's consideration in this proceeding ("Proposed Rules").

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that notice of the Proposed Rules should be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.⁴ The Commission has taken certain actions, and may take

⁴ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Gov. Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and

additional actions going forward, which could impact the procedures in this proceeding.⁵

Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) All filings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and Format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁶ For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁷

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

⁵ See, e.g., *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), *extended by* Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

⁶ 5 VAC 5-20-10 *et seq.*

⁷ As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

(3) Within five (5) business days of the date of this Order, Staff shall transmit electronically copies of this Order to those persons and entities identified by Staff as potentially having an interest in this matter.

(4) An electronic copy of the Proposed Rules may be obtained by submitting a request to Lauren Govoni in the Commission's Division of Utility and Railroad Safety at the following e-mail address: Lauren.Govoni@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Utility and Railroad Safety's website: scc.virginia.gov/pages/Rulemaking. Additionally, interested persons may download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) On or before February 2, 2021, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Such comments may also include proposed modifications and hearing requests. All filings shall refer to Case No. URS-2020-00052. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be addressed adequately in written comments. If a satisfactory request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(6) On or before February 25, 2021, the Staff may file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(7) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission. A copy hereof also shall be sent to the Commission's Office of General Counsel and Division of Utility and Railroad Safety.

STATE CORPORATION COMMISSION

Licensed Professional Engineer to Exercise Responsible Charge Over Certain
Natural Gas Engineering ProjectsCHAPTER 360LICENSED PROFESSIONAL ENGINEER TO EXERCISE RESPONSIBLE CHARGE
OVER CERTAIN NATURAL GAS ENGINEERING**20VAC5-360-10. Purpose and scope.**

This chapter delineates standards used by the Commission to enforce the provisions of § 56-257.2:1 of the Code of Virginia. This chapter further details certain standards and requirements for professional engineering oversight of projects that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 U.S.C § 60101 *et seq.*, as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety.

20VAC5-360-20. Definitions.

Terms used in this chapter shall have the same meaning and effect as in the federal pipeline safety laws under 49 U.S.C § 60101 *et seq.*, and 49 C.F.R Parts 191, 192, 193, and 195. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" - means Chapter 822 of the 2020 Acts of Assembly.

"Bypass" - means a pipeline connection or control mechanism installed to in order to allow construction, maintenance, or repair work, thus altering the flow of gas or hazardous liquid to different facilities other than those transporting the gas prior to installation of the pipeline connection or control mechanism.

"Commission" - means the Virginia State Corporation Commission.

"Commission's pipeline standards" - means standards for gas and hazardous liquid pipeline facilities adopted, prescribed, or enforced by the Virginia State Corporation Commission.

"Compressor stations" - means pipeline facilities that compress natural gas, increasing the pressure and providing the energy needed to move the gas through the pipeline.

"District regulator stations" - means a pressure regulating station that controls pressure to a high or low-pressure distribution main.

"Emergency work" - means non-routine maintenance or repair work, such as repairs to hazardous leaks, that should be performed immediately. Examples include: third party damages, repairs, work to maintain priority service, reduce customer outages as a matter of safety, and compromises to system integrity as a cause of overpressurization.

"Engineered structures" - means distribution mains vertically attached to buildings, overpasses, or water crossings.

"Gate station" - means pressure regulating stations where custody of natural gas or hazardous liquid is transferred from an interstate supplier to a Virginia public service company.

"Maintenance" - means any repair or rehabilitation activity performed on a pipeline facility or prescribed by 49 C.F.R. § 192.701 *et seq.*, (Subpart M).

"MAOP" - means maximum allowable operating pressure.

"O&M Procedures" - means any operations or maintenance procedures or processes prepared by the operator for conducting operations and maintenance activities or emergency response, as prescribed by 49 C.F.R § 192.601 *et seq.*, (Subpart L).

"Peak shaving facilities" - means pipeline storage facilities designed to house natural gas or propane gas for reintroduction into an operator's system at times of peak demand. These facilities may store liquified natural gas or liquified petroleum gas.

"P.E. stamp" - means a professional seal as prescribed by 18VAC10-20-760, pertaining to use of seal.

"Public right-of-way" - means any portion of a designated interstate, freeway, or expressway, as well as any other principal arterial roadway with four or more lanes, as defined in the Federal Highway Administration's Highway Functional Classification Concepts, Criteria and Procedures. Section 3.1 (*see: https://www.fhwa.dot.gov/planning/processes/statewide/related/highway_functional_classifications/fcauab.pdf*).

"Professional engineer" or "P.E." - means a person who is Qualified to practice engineering by reason of special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"PSIG" - means pounds per square inch, gauge.

"Repair" - means any activity on a distribution main or transmission line that calls for removing the leak by cutting out and replacing a cylindrical piece of pipe, installing a

pressure-carrying full encirclement welded split sleeve of appropriate design, or any other permanent repair that is consistent with 49 C.F.R § 192.717.

"Tie-in" - means any process of connecting a newly installed pipeline to either an existing pipeline, or another newly installed pipeline, by means of joining.

"Uprating" - means the act of increasing maximum allowable operating pressures for pipelines.

20VAC5-360-30. Use of professional engineers.

A. Any gas pipeline engineering plans or specifications for engineering work or services that (i) involve gas pipeline facilities, as defined in the federal regulations promulgated under 49 U.S.C § 60101 *et seq.*, as amended and adopted by the Commission, and the federal pipeline safety laws, and (ii) may present a material risk to public safety must be produced by, or under the direct charge and supervision of, a professional engineer with sufficient knowledge of a gas company's natural gas distribution system, and such plans or specifications must bear the professional engineer's stamp, in accordance with § 54,1-406 of the Code of Virginia.

B. A professional engineer must ensure that the plan or specification conforms to the applicable pipeline safety laws, regulations, and standards, and the review and use of a professional engineer's stamp must comply with the professional and ethical obligations set forth in Virginia.

C. Engineering services involving gas pipeline facilities and that present a material risk to public safety, shall include, but are not limited to:

1. New installation of a district pressure regulator stations, compressor stations, or gate stations.

2. Reconfiguration or physical facility changes performed at district pressure regulator stations, compressor stations, or gate stations that alter or modify the configuration or overpressure protection of equipment.
3. Installation, uprating, repair, or abandonment of intrastate transmission pipelines.
4. Any distribution main piping modifications or replacement work falling within established district regulator awareness zones as established by each operator.
5. Any construction or maintenance work on distribution mains that changes the system operating pressure and requires a bypass, or a change in the system operating pressure that involves more than two tie-ins.
6. Installation of distribution mains where such mains attach to bridges or other engineered structures.
7. Installation of distribution mains, including replacements and extension projects, that are within, or cross, any public right-of-way.
8. Installation or abandonment of service lines connecting to transmission lines or a high-pressure distribution main with a MAOP that exceeds 90 p.s.i.g.
9. Installation of peak shaving facilities, to include any modifications or reconfigurations that would alter such a facility's pressure delivery characteristics.
10. Any other project in the judgment of the operator that poses a material risk to public safety.

D. A professional engineer's stamp is not required for emergency work, but a professional engineer's stamp is required after the emergency has been resolved if the remaining work or services are on a project that presents a material risk to public safety.

E. Incorporation of Guidelines into Operations and Maintenance Procedures: Each public service company shall incorporate these Professional Engineer Regulations into its written procedures under 49 C.F.R. Part 192 and the Commission's Pipeline Safety Standards.

20VAC5-360-40. Documentation.

Each public service company subject to this chapter shall maintain the plans and specifications that must bear a professional engineer's stamp pursuant to this chapter at its office. These plans and specifications shall be readily accessible upon request of the Commission, and they shall be maintained in accordance with the document retention timelines set forth in 49 C.F.R. Part 192 and the Commission's pipeline safety standards.

20VAC5-360-50. Commission authority.

A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

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